



JFW

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/659,135 Confirmation No.: 4800  
Applicant(s): Quantz et al.  
Filed: September 10, 2003  
Art Unit: 1761  
Examiner: T. F. Simone  
Title: NUT TRANSPORT ELEMENT FOR USE IN HIGH PRODUCTION  
NUTCRACKING APPARATUS

Docket No.: 030676/267282  
Customer No.: 00826

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE

Reconsideration and allowance of the rejected claims of the subject application are respectfully requested in light of the following evidence and authorities.

In the Official Action, Claims 1 and 3-5 were rejected as being unpatentable over the commonly owned patent to Quantz, No. 6,584,890. These claims define the invention as comprising a nut transport element, and a feed chain which is composed of such elements, and which is designed for use as part of a high speed nutcracking apparatus. An important novel feature of the invention is the fact that the elements are fabricated from a high impact plastic material as opposed to the earlier elements which were fabricated from aluminum alloy.

As pointed out in the paragraph beginning at page 2, line 32 of the specification, and as further explained in the accompanying Declaration of James B. Quantz, the conventional nut transport elements were subject to relatively rapid wear, and breakage of the wings thereof, which required the frequent replacement of the entire feed chain. As Mr. Quantz explains

in his Declaration, the substitution of the claimed plastic nut transport elements for the conventional aluminum elements, results in the significant and unexpected advantage that there is less damage to both the nut transport elements and the anvils of the cracking units.

As also pointed out in the Declaration of Mr. Quantz, the fabrication of the nut transport elements from plastic results in further advantages, resulting from the fact that the feed chain is of significantly reduced weight. Still further, the use of plastic permits the elements to be easily and permanently color coded so as to permit the size of the nut receptacles of the elements to be readily identified.

The presence of these significant and unexpected benefits and advantages are persuasive evidence of non-obviousness and patentability and effectively rebut a case of *prima facie* obviousness, see for example Section 716.02 of the MPEP and the cases cited therein.

The conditional allowance of Claims 2, 6, and 7 is noted with appreciation, and for the reasons set forth above, it is submitted that Claims 1 and 3-5 are also in condition for allowance, and such action is solicited.

Respectfully submitted,



Charles B. Elderkin  
Registration No. 24,357

Customer No. 00826  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111  
#4664728v1

Appl. No.: 10/659,135  
Filed: September 10, 2003  
Page 3

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 8, 2004

  
\_\_\_\_\_  
Joyce D. Smith